

of sale with the Crown was never completed. And therefore these lands do now belong to him, in the same manner as they did to his predecessor Sir Robert Spottiswoode; and it ought to be found that he is the true superior.

No 55.

THE LORDS found, That the superiority of the lands in question not having belonged originally to Spottiswoode, but being granted by the Crown to the Bishop of Edinburgh, fall under the prohibition of the act 1690; and that Spottiswoode could not be interposed as superior between the King and Mr Nasmith the vassal.'

Act. Dav. Dalrymple Ferguson.

Alt. Burnet.

G. C.

Fac. Col. No 93. p. 165.

1767. December 19.

SPOTTISWOOD of Spottiswood, *against* COPLAND of Collieston, and Others.

THE question occurred, upon the same *species facti* as in 4th February 1758, Spottiswood of Spottiswood *contra* Creditors of Nasmyth of Earlshaugh, No 55. p. 8000. where a vassal of the Abbacy of New Abbey was found entitled to hold of the Crown.

No 56.
Decided contrary to the above.

Here, however, the judgment was different; and Spottiswood prevailed in a declarator of superiority and non-entry, against Copland elder and younger of Collieston, and certain other vassals of the Abbacy.

Some time before, a similar action had been brought by Spottiswood against Burnet of Craigen, one of the vassals; and the interlocutor pronounced by the Lord Ordinary, in that case, will sufficiently point out the principles upon which the present question was decided.

Found, That as the charter from the Crown in favour of the pursuer, *anno* 1742, proceeds upon the narrative of the charter 1624, the signature 1641, the signature 1660, the declaration of Parliament 1695, and the decret of the Court of Session 1740, that charter ought to receive the most liberal construction, in order to restore the pursuer to the full right and title of the lands and barony of New Abbey, &c. as the same stood in the person of Sir Robert Spottiswood, the pursuer's great-grand-father, in the 1634, when he resigned the same into the hands of the Crown, for a price that was never paid: Found, that by virtue of the charter 1624, and the act of dissolution 1633, Sir Robert Spottiswood was, in the year 1634, entitled to the superiority of the lands formerly held of the abbacy of New Abbey: Found, that the act 1690, declaring the superiorities which pertained to Bishops to belong to the Crown, ought not to be extended to the superiority of New Abbey, in respect that, by the declaration of Parliament 1695, it is declared, that the act 1662, restoring Bishops to their possessions, as in the year 1637, did not prejudge the pursuer's father: And therefore found, that the pursuer is entitled to the superiority of the defender's

No 56. lands in question, which had confessedly been held of the Abbey of New Abbey; and that these lands are in non-entry.'

The interlocutor was altered upon a petition, and the COURT found, 'That James Burnet is entitled to hold his lands of the Crown.' But, upon an appeal, this judgment was reversed, and that of the Lord Ordinary affirmed.

Mr Copland endeavoured to diversify his case from that of Craigend; but without success: And accordingly the LORDS 'repelled the defences, and decerned in the declarator.'

Act. *Lockhart, David Dalrymple.*

Alt. *Maclaurin, Crosbie.*

G. F.

Fac. Col. No 62. p. 302.

1771. June 13. & July 25.

JOHN SPOTTISWOOD of Spottiswood, Pursuer, against JOHN FRASER of Lagan, Defender.

No 57.

Decided in conformity with the above, and contrary to No 55. p. 8000.

THE pursuer, in the year 1741, obtained a Crown-charter; by which he was put in place of the Bishop of Edinburgh, with respect to certain heritable subjects, which had anciently belonged to the Abbacy of New Abbey.

The facts relative to Spottiswood the pursuer's right and acquisition of these subjects, are stated in the Decision, 4th Feb. 1758, Spottiswood *contra* the Creditors of Nasmith, No 55. p. 8000., where it was decided, that a vassal of that Abbacy was entitled to hold of the Crown. Opposite judgments were afterwards given, *first*, In a process of declarator and non-entry against Burnet of Craigend, determined in the House of Lords in 1763; and, *secondly*, In the case of the 19th Dec. 1767, Spottiswood *contra* Copland of Collieston, No 56. p. 8003. *supra*; in both of which it was found, that Spottiswood was entitled to the superiority of the respective lands in question, which had been held of the New Abbey, and that these lands were in non-entry.

In the year 1765, Spottiswood brought a declarator of non-entry against the defender, as heritable proprietor of certain lands which had formerly held of the Abbacy; when it was stated in defence, *1mo*, That as the defender and his father had possessed their lands as vassals of the Crown, upon charter and sasine, for upwards of 40 years without challenge, he had acquired a prescriptive right to hold of the Crown. *2do*, That the defender's public infeftment excluded any claim for non-entry during his lifetime; at least he could only be bound to enter with Spottiswood, not as a singular successor, but as heir to his father, who died publicly infeft before Spottiswood had got his right from the Crown. *3tio*, That, at all events, the lands could be found in non-entry only from the decree in the pursuer's favour.

The Lord Ordinary, on the 23d November 1770, found, 'That the pursuer, in virtue of the charter and sasine libelled on, has good and undoubted